

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-07/08-338
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for an exception under M108 for Medicaid coverage of custom made rubber earplugs. The issue is whether the petitioner has shown that serious detrimental health consequences will occur if she does not receive custom made rubber earplugs.

FINDINGS OF FACT

1. The petitioner is a sixty-one-year-old woman who receives Supplemental Security Income (SSI) disability benefits. Petitioner has both physical and mental problems. Petitioner is diagnosed with schizophrenia although petitioner disagrees with this diagnosis. Petitioner hears voices and noises that harass and scare her and that keep her from sleeping. She is seeking custom made earplugs to block these voices and noises in order to reduce stress and to sleep through the night. Petitioner has tried other means to block these sounds to no avail.

2. Petitioner had a pair of custom made earplugs for approximately five years but her right earplug went missing last winter. When petitioner had both earplugs, she was able to block the voices and noises and she was able to sleep through the night.

3. Petitioner applied for a M108 exception on or about April 2, 2008 seeking payment for two custom made rubber earplugs. In her application, petitioner noted that she uses these earplugs for sleep, rest, reading and to protect herself from painful noise. Petitioner wrote that she lost her right earplug due to Geiger counter noise and wall-tapping harassment. Petitioner stated that over the counter earplugs do not block the voices and noises and that they cause ear infections. Petitioner's mental illness is apparent from her request.

4. OVHA had difficulties obtaining documentation from Dr. H, petitioner's physician. Dr. H treats petitioner for her physical ailments. Dr. H wrote on April 9, 2008 that petitioner has "paranoid schizophrenia whose delusions include external stimuli imposed upon her through her ears".

5. On June 24, 2008, OVHA's Director of Medicaid determined that the submitted medical information did not show that custom made rubber earplugs were needed to avoid

serious detrimental health consequences, that petitioner's condition was not unique, and that the rubber earplugs were a comfort item. OVHA noted that they learned that petitioner is receiving mental health treatment. OVHA did not seek documentation from petitioner's mental health program to determine whether mental health considerations supported petitioner's request.

6. Dr. H sent an updated medical need form on July 9, 2008 iterating that petitioner has chronic paranoid schizophrenia and noting that petitioner "has severe auditory symptoms which impact her daily function".

7. On July 24, 2008, petitioner sent a ten page letter to OVHA to appeal the M108 denial including information that she misses from two to six hours of sleep each night because of wall tapping by neighbors and insidious whispers from a stalker who also uses Geiger counter for harassment, and that as result, she is tired during the day, stumbles, and is sleep deprived. The letter is written in a manner that is consistent with her diagnosis of paranoid schizophrenia.

8. A fair hearing was commenced on September 11, 2008. Petitioner testified and described hearing a stalker who was unkind, cruel, and who follows her every night. She wants the custom made earplugs so she can sleep at night since her

other efforts to block out the noise are not successful. She believes that the total cost is \$80.

9. Petitioner was supported by BL, her case manager from the local community health agency. BL's title is community support outreach clinician. BL has been petitioner's case manager for approximately ten months and supports petitioner's request for custom made rubber earplugs. BL explained that petitioner has auditory hallucinations leading to sleep deprivation that affects her physical and mental health. BL explained that the custom made earplugs are a good strategy for petitioner to block the voices and that there were materials supporting the use of custom made earplugs. The case was continued to allow BL to supplement the record and for OVHA to review its decision.

10. BL subsequently wrote that there were many approaches to blocking noise and that no one approach fit everyone. She noted that petitioner had the most success blocking auditory hallucinations through mechanical means. She noted that sleep deprivation leads to diminished judgment, decreased ability to handle stress, decreased concentration and decreased motor skills.

11. BL supplied four articles to OVHA.¹ These articles show that there are a number of causes for hearing voices and noises that distress the individual including schizophrenia. These articles describe the methods used by health practitioners to help their patients block or diminish hearing voices and noises. The consensus is that there is no one approach that can be used to block voices or other sounds but a range of approaches exist including mechanical approaches such as custom made rubber earplugs. The consensus is that the individual is a key participant working with professionals to put in place strategies that will work for the particular individual.

12. OVHA reviewed the additional information and issued a revised Medical Basis Statement on October 22, 2008 stating that there was insufficient evidence based research that using a custom made rubber earplug is medically necessary to deal with auditory hallucinations.

13. Petitioner has amended her request for only the right earplug as she still has the left custom made earplug.

¹ The articles included (1) Warner, A.; Strathdie, G.; and Bhul, K. (1996). *On Learning from the Patient: Hearing Voices*. 20 Psychiatric Bulletin 490-492; (2) Ritsher, Otilingam, Lucksted and Grajales (2004). *Hearing Voices: Explanations and implications*. University of California Postprints, paper 1597; (3) Deegan (1995). *Coping with Voices: Self-help strategies for People Who Hear Voices that Are Distressing*. National Empowerment Center; and Deptford Hearing Voices Services. *Coping with Voices*. HearingVoices.net.

14. Petitioner's testimony regarding the extent and effects of the voices and noises she hears is credible.

15. Petitioner's testimony regarding the relief she experienced from the voices and noises during the five year period she used both custom made earplugs is credible.

ORDER

OVHA's decision to deny petitioner a M108 exception is reversed and an exception is granted to cover the cost for a custom made rubber earplug for petitioner's right ear.

REASONS

Petitioner requests a service that is not included under the Medicaid regulations. However, OVHA has a procedure for individuals to request exceptions provided the individuals submit information and documentation that meet the criteria in M108. OVHA has an obligation to make an individualized assessment of each request.

OVHA must review petitioner's information and documentation in relation to the following criteria:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?

2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about the efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within OVHA's discretion and will not be overturned unless OVHA has abused its discretion by either failing to consider and address all the pertinent medical evidence under each criterion set forth

above or by reaching a decision that cannot be reasonably supported by the evidence. Fair Hearing Nos. 20,275; 21,166.

Although petitioner does not couch her request as one dealing with unwanted stressful auditory hallucinations, the request is for a mechanical aid that will block these unwanted voices and noises that harass petitioner, interrupt her sleep, and negatively impact upon her day to day functioning. A custom made rubber ear plug is not a "comfort item" but a tool to control a symptom of petitioner's particular medical condition that causes her distress each day she cannot block the voices and noises she hears. Petitioner has successfully used custom made rubber ear plugs in the past to control these unwanted sounds.

In addition, petitioner seeks to control the voices and noises she hears so that she can sleep through the evening. Now, she loses two to six hours of sleep each night causing her to feel sleep deprived. BL specified the ongoing problems caused by sleep deprivation including diminished judgment, decreased concentration and ability to handle stress, and diminished motor skills. Common sense tells us that ongoing sleep deprivation stresses both the petitioner's physical and mental health.

Petitioner not only suffers detrimental health consequences but will continue to do so if she cannot control her auditory hallucinations through a method that has worked well for her in the past.

OVHA questions the use of custom made rubber ear plugs to control unwanted voices, noises, or sounds. However, the practice by physicians and mental health clinicians is to work with individual patients to find the methods that work for a particular person; these methods include custom made rubber ear plugs. This approach is supported by petitioner's mental health provider and her doctor.

OVHA's decision is not supported by a full consideration of the petitioner's current condition and circumstances. OVHA's decision is reversed and an exception granted for the payment of a custom made rubber ear plug for petitioner's right ear. 3 V.S.A. § 3091(d).

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